IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8068 OF 2005

Kashinath A.Kothekar and Ors. .. Petitioners

Vs.

Dilip A.Kothekar ..Respondent

Mr.Rajiv Patil for the petitioner

Ms.Sonia Miskin for Mr.T.K.Patil for the respndent

CORAM : S.U.KAMDAR, J
DATED : 14TH DECEMBER, 2005

P.C.:

. By the present petition, the petitioners are challenging the order dt.26.9.05 by which part of the application for amendment is refused. The learned counsel for the respondent has pointed out para 4 of the pliant as well as para 2a of the application for amendment. Undoubtedly, it is true that both the pleadings are not very consistent and are somewhat inconsistent. I am of the opinion that even if it is so amendment application cannot be refused in view of the judgements of the Supreme Court which is followed by me in my Judgment reported in 2005 2 MLJ 700 in the case of Lok

Housing and Construction Ltd Vs. Everest Industries Ltd. If there is inconsistent plea it will be at the risk of the plaintiffs itself and defendant is not in any way affected. However, defendant will be at liberty to file additional written statement in respect to the amendment carried out to the pliant. Ex.D in Civil Suit No.48 of 2004 is accordingly granted in full. Amendment to be carried out for remaining part also within 2 weeks. Additional written statement to be filed within 2 weeks thereafter after service of the amended plaint on the defendant. Petition disposed of accordingly. No order as to costs. Trial court is directed to proceed with the aforesaid stage in the trial of the suit.